

No 58.
 purgeable,
 the offer be-
 ing made
 long after
 raising the
 declarator.

said William Wardlaw reduced for not payment of the feu duties therein contained, for the space of three or four years, conform to the act of Parliament made thereanent. It was *excepted*, That he ought to be assoilzied, because this pursuit not being upon a clause irritant, contained in the infeftment, nor in the King's property, but *inter privatos* upon the act of Parliament, which is relative to the law, civil and canon, of the law *licet purgare moram ante litem contestationem*; likeas, the defender offers instantly to pay all bygones. It was *answered*, That this summons being founded *super provisione legis*, and there neither being payment made, nor any real offer, by the space of six years, the pursuer could not now be compelled to accept any such offer, not only after the expiring of so long time, but after the dependence of this so long a plea, seeing the summons was intended in *anno 1602*, and never an offer made before this day. THE LORDS having reasoned whether the oversight might be purged *ante litem contestatam, vel ante litem intentatam, vel ante diem comparationis*, they thought it meetest in this case to repel the allegiance, in respect of the state of the process, and that there was no offer made neither before the action, nor *sinsyne*; during so long dependence till this time.

Fol. Dic. v. 1. p. 488. Haddington, MS. No 802.

No 59.
 Found, that a
 conventional
 irritancy
 might be
 pleaded by
 way of excep-
 tion without
 declarator.

1622. July 16.

DONALDSON *against* TENANTS.

IN the action pursued by James Donaldson and Gilbert Kirkwood against the Tenants of Killeth, for removing; the tenants, and Mr Simon Ramsay who was infeft, *alleged*, that the pursuer could have no action to remove them upon his infeftment, because when the pursuer obtained his infeftment, he had set a back tack to the granter of the wadset, from whom they had right; albeit it contained a clause irritant, yet it required a declarator of the failzie before they could remove the tenants. The pursuer *answered*, That the back tack bears an express provision, that in case the tacksman failed in payment of the duty, the tack should expire and be null, without declarator. THE LORDS found, that in contracts of that nature, where the clause of nullity was consented to have effect without declarator, that they might be received by way of exception or reply without declarator.

Fol. Dic. v. 1. p. 488. Haddington, MS. No 2651.

No 60.

1628. July 4.

LAIRD OF SAUCHY *against* HIS TENANTS.

IN a removing pursued by the Laird of Sauchy against his Tenants, *alleged* for one of the defenders, That he had a tack of the same lands, for terms to run the time of the warning, set to him by the pursuer. *Replied*, That tack contained an irritant clause, that in case the defender should fail in payment